IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.17621 OF 2007
and
WP.MP.NO.1,2 AND 3 OF 2007

Emirates Airlines
represented by the Human Resources
Manager,
Mumbai. ...Petitioner

Vs.

1.The Central Government Industrial Tribunal
-cum-Labour Court,
rep. By the Secretary to Government,
Shastri Bhavan - I Floor,
Haddows Road,
Chennai.

2.Mohammed Moosa Mohammed
S/o P.M.Mohammed,
33, Musallar Nagar,
Killikolloor,
Kollam-4.. ...Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari stated within

For Petitioners: Mr.AR.L.Sundaresan
Senior Counsel
for Mr.Srinath Sridevan
For Respondent No.2:Mr.P.K.Ibrahim

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O R D E R

This writ petition has been filed challenging the order of the first respondent, Industrial Tribunal-cum-Labour Court, Chennai made in I.D.No.63 of 2005 dated 5.12.2006 whereby the reinstatement of service of the second respondent along with all backwages has been ordered.

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2. The Court heard the learned counsel on either side.

3. Affidavit filed in support of the petitioner and also counter affidavit filed by the parties are looked into.

4. The admitted facts that would emerge from the submissions made and the averments could be stated thus: The second respondent on appointment by order dated 30.8.2000 was engaged as Security Warden at Chennai Airport. Immediately on his appointment, he underwent Training at Mumbai, as per the instructions, from 1.8.2000 onwards and then he reported for duty at Chennai on 1.9.2000. When he was on duty, he met with an accident on 17.2.2001. He was hospitalised for a long time as inpatient. The order of termination was served upon him on 31.3.2001 by the Management and the same was challenged by the petitioner by way of appeal before the Management. The Management rejected the appeal. Then he approached the Assistant Labour Commissioner(Central) and raised a dispute. The Assistant Labour Commissioner in turn referred the dispute to the Tribunal for adjudication and it was taken on file in I.D.No.63 of 2005. Pursuant to the enquiry, the Tribunal passed the impugned order of reinstatement of the second respondent along with entire backwages. Hence, this writ petition has arisen at the instance of the Management.

5. Advancing the argument on behalf of the petitioner-Management, Mr.AR.L.Sundaresan, learned Senior Counsel would submit that an agreement was entered into between the parties and the same was signed only on 16.9.2000, that the period of probation was for six months, that the second respondent met with an accident on 17.2.2001 , and thus the second respondent has not completed the period of probation. The agreement was entered into on 16.9.2000 and the accident had happened on 17.2.2001 and from the said date onwards, he did not come for work and if it is calculated , it would fall within the period of probation and thus he has not served the period of six months and hence he was only a probationer at the time of passing of the termination order. He has not challenged the order of termination and hence he could not raise the Industrial dispute and therefore he is not entitled to have the reinstatement of service and thus the Industrial Tribunal has not adverted its attention over the same. Added further the learned Senior Counsel that in the instant case, even assuming he has completed the period of probation, if the probation is declared, he has got to be taken as regular employee and after the termination order was served upon him, he got the terminal benefits by way of encashing a cheque for one month pay and when the cheque was issued to him on 31.3.2001 along with termination order, he sought for revalidation on 24.10.002 and accordingly it was revalidated and reissued on 23.01.2003. He also made a request for payment of Provident Fund dues and the petitioner Management assisted the second respondent in this behalf and thus it would be indicative of the fact that the second respondent has accepted the termination. Apart from this, he has got the medical benefits. All would go to show that he has accepted the termination of his service. Having accepted the termination of service and obtained all the

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benefits which he was entitled to get, now he is estopped from questioning the termination order. Further,the learned Senior Counsel would add that in the instant case, when the Industrial dispute was raised before the Tribunal, the first part would be whether the order of termination was valid for any reasons therein,and the second part would be that if found to be not bad, whether any opportunity was given to the petitioner-Management to substantiate their case. In the instant case, the Tribunal has answered the first part viz. that the termination was not bad, since he was a probationer and all the benefits were given to him. But it has not applied its mind to the second part. It has not given opportunity to the Management to put forth the defence in order to substantiate their case. Under such circumstances, the order of reinstatement made by the Tribunal is bad and in support of his contention, he has relied on a decision of the Apex Court reported in AIR 1996 SC 1556 (Bharat Forge Company Ltd., Vs. A.B. Zodge and another. In the instant case, when an appeal was preferred by the second respondent before the Management, as per the Rules, he has not asked for reinstatement, but he has asked for compensation and medical benefits and thus it would be indicative of the fact that he has accepted the termination order. Lastly, learned Senior Counsel made much comment over the order of Industrial Tribunal regarding the award of entire backwages. He met with an accident on 17.2.2001. He himself has admitted that he did not work for the period from 17.2.2001 and thereafter he has moved for conciliation on 29.9.2000. During the interregnum period, neither he came forward asking for reinstatement nor he has moved any forum challenging the said termination order. On the contrary, he has not worked for the said period. Hence, no work and no pay would follow and hence it has got to be applied. Apart from this, in the instant case, where backwages has been ordered, before deciding the question of reinstatement, the Court must be attentive and it should not make an order mechanically. But, the Tribunal has ordered backwages automatically and hence it has got to be set aside.

6. In answer to the above, learned counsel for the second respondent would submit that in the instant case, the order of the first respondent, the Industrial Tribunal has got to be sustained. The period of probation as per the agreement entered into between the parties was six months. It is true that the agreement was signed on 16.9.2000, but in the agreement it was clearly stated that it would be given effect from 1.8.2000 onwards and thus six months period was over at the end of January, 2001. The accident took place on 17.2.2001 and thus on that day the six months period was over and accordingly even as per rules, on completion of six months, if the probation is not declared by the Management, it has got to be declared . In so far as the probation period was concerned, nothing can be found fault with him. He has become a regular employee. If he is the regular employee, he is entitled to have the benefits accrued to him. In the instant case, he met with an accident on 17.2.2001 and he was hospitalised for a long time and he was in Coma stage for four months. In such circumstances, there is no question of immediate intimation by the employee would arise. It is an admitted position that the staff of the petitioner-Management went to the hospital

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and visited him in the hospital and thus they have got a clear knowledge. It is true that he asked for medical benefits to which he was entitled under the Insurance coverage and the contention that he has asked for revalidation of the cheque and got that amount and form for Provident Fund was filled up by him are all factual positions. Even assuming that they have taken steps with regard to the benefits which the regular employee is entitled to get from the employer, at no stretch of imagination, the second respondent can be estopped against law. Under the circumstances, it cannot be answered that the termination is valid, and it was declared to be bad. Added further, in the instant case, the last contention put forth by the Management that no opportunity was given, cannot be countenanced. In the instant case, there was an Industrial Dispute before the Tribunal, Both the parties were offorded opportunity for adducing their evidence. After hearing the both the parties, the Tribunal had come to a conclusion and declared the termination as bad and once it is declared as bad, all other benefits would follow in a case of regular employee, who is entitled to have benefit of the same and accordingly, it was done. Even the decision put forth by the learned Senior Counsel has no application to the present situation. In so far as awarding entire backwages by the Tribunal is concerned, according to the learned counsel for the second respondent it was correctly done. In the instant case, it is true that the second respondent met with an accident on 17.2.2001. He was under treatment till 2004. Thereafter, conciliation was made and since it did not fructify, the matter was referred to Industrial Dispute. Thereafter, this Court granted stay of the operation of the order dated 5.12.2006, made in I.D.No.63 of 2005. He has not been paid all the period and if the circumstances are to be taken, he was in regular employment who has taken medical treatment during this period and hence the order of the Tribunal awarding full backwages has got to be sustained.

7. The Court paid its anxious consideration on the submissions made. It is not in controversy that the second respondent pursuant to the appointment with the petitioner Management, reported for duty on 1.8.2000 at Mumbai and thereafter, on completion of training, he reported for duty at Chennai Air Port. An agreement was entered into between the parties on 16.9.2000, but from the very reading of the agreement, it would be clear that it came into effect from 1.8.2000. The period of probation is fixed as six months and thus it would come to an end on 31.1.2001. It is not the case of the petitioner-Management that there was any interruption of duty during the period of probation. Thus, he has completed the period of probation at the end of January, 2001. It is true that it was not declared by the management as per the rules. If the period of probation is over and if it is not declared by the management, it has got to be declared on completion of probation period on 31.1.2001. Thus, he has become a regular employee of the petitioner-Management. It is needless to say that once he has become a regular employee, he is entitled to have the benefit under law. He met with an accident on 17.2.2001 and he was at the stage of Coma for a period of four months. When a person is in the medical care for a period of four months, one cannot expect that he must immediately intimate to the Management. Except a few, all other staff have come over to the

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hospital and visited him. Thus, no question of immediate intimation would arise. Further, in the instant case, the contention put forth by the learned counsel for the writ petitioner that when he made an appeal, he did not ask for reinstatement, but he has asked for revalidation of cheque and that he actually encashed the cheque issued to him, and when he was filling up the Provident Fund form, he sought the assistance of the Management. All would go to show that he is entitled to have the benefits available to him on termination of service, which in the opinion of this Court cannot be a answer for termination, and it has got to be declared as bad. In the instant case, the whole contention put forth by the writ petitioner before the forum below was that he was a probationer and therefore, his services were terminated by a letter of termination. Once the services of the second respondent were regular and without calling for any explanation, his services have been terminated, this Court has no other option than to declare the termination order as bad. Further, the contention by the learned Senior counsel for the petitioner is that in the instant case, while the Industrial dispute was raised before the Tribunal, there were two stages and the first stage was the validity of the order of termination and the second one was that if the Tribunal comes to the conclusion that the order of termination was bad, an opportunity should be given to the management to adduce further evidence, in the ordinary course. In the instant case, the Court,is unable to agree with the learned Senior counsel for the petitioner. When an Industrial dispute was referred, there was a full fledged enquiry and both sides were given opportunity to put forth their respective contentions and the evidence both oral and documentary were fully considered by the forum below. Hence, the contention by the learned Senior counsel for the petitioner that when an opportunity is available in a case where there was denial of opportunity to put forth their defence, without any hesitation, it has got to be held that the opportunity available to him, was not given cannt be accepted. But, in the instant case, opportunity was given to both sides to adduce evidence and hence this Court is unable to see any denial of opportunity to the Management,and that too in the case on hand, the Management has adduced both oral and documentary evidence. The decision relied on by the learned Senior counsel cannot be applied to this case, because in the said case, originally charges were framed against the delinquent and under such circumstances, further opportunity has been given to substantiate the order of termination. In the instant case, termination order was served even without calling for explanation and no charges were framed. Hence, the decision relied on by the learned Senior Counsel, cannot be applied to the present case.

8. In so far as awarding of entire backwages is concerned, the contention of either side is considered by this Court. The Court is of the considered opinion that it is a fit case where the order awarding entire backwages, has got to be sustained for more reasons than one . It cannot be denied that the second respondent met with an accident on 17.2.2001 and he was under treatment for a period of three years and in the instant case, the matter has been referred to conciliation on 29.9.2004. Since it could not fructify, the matter was referred to Industrial Dispute before

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the Industrial Tribunal. He was actually given employment. After the award was passed by the Tribunal, it has been considered by the Court and thus it would be quite clear that he was not put in service from the accident till this day. It is well settled proposition of law that while awarding entire backwages, even if reinstatement is ordered, it should not be done mechanically, but the attendant circumstances must also be considered. In the instant case, circumstances were considered and it was only in favour of the employee. Once he met with an accident on 17.2.2001, he was under treatment for a period of three years and he made an appeal before the Management and thereafter he raised an Industrial Dispute before the Tribunal and now the proceedings were pending in this Court. All the period, he has not worked anywhere and actually he had undergone treatment, during that period, and hence, this Court is of the considered opinion that the circumstances are only in favour of the employee. The Tribunal is perfectly correct in granting backwages, and hence it has got to be sustained. Under such circumstances, the order of the Tribunal declaring the termination as bad and giving a finding that he has to be reinstated with all backwages has got to be sustained by this Court and accordingly it is sustained..

9. Hence, the writ petition is dismissed. No costs. Consequently, MP.Nos.1,2 and 3 of 2007 are also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

VJY

To

1. The Secretary to Government,
   The Central Government Industrial Tribunal
   -cum-Labour Court,
   Shastri Bhavan - I Floor,
   Haddows Road, Chennai.

1 CC To Mr.Srinath Sridevan, Advocate, SR NO.56270.
1 CC To Mr.Ibrahim Ali, Advocate, SR NO.56098.

W.P.NO. 17621 OF 2007
WP.MP.NO.1,2 AND 3 OF 2007

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